IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN AT JODHPUR

CIVIL SECOND APPEAL No. 207 of 2006

RAFIQ KHAN
V/S
YAKUB MOHD.

Mr. MANOJ JOSHI, for the appellant / petitioner

Mr. SP SHARMA, for the respondent

Date of Order : 24.8.2006

HON'BLE SHRI N P GUPTA,J.

ORDER

Heard learned counsel for the parties.

Having perused the impugned judgments, I am satisfied that the findings recorded by both the learned Courts below on the question of reasonable and bonafide necessity, and comparative hardship, are not vitiated on any of the grounds available under Section 100 CPC.

The objection raised by the learned counsel for the appellant was that the learned Courts below have erred in deciding issue No.5 i.e. that the defendant is in possession as a mortgagee.

I have considered the submissions, in my view, both the learned Courts below have rightly found that the alleged mortgage deed is unregistered, and therefore, that

can't be looked into. Admittedly, the defendant is and was a tenant, therefore, this contention has no force, and is negatived.

The appeal thus, does not involve any substantial question of law, and is dismissed summarily.

At this stage, learned counsel for the appellant prayed for time. After hearing on this question, it was pointed out by learned counsel for the respondent that the defendant is not paying any rent of the premises for use and occupation even as decreed by the learned Courts below, and equitably even if it is considered that the shop was mortgaged for Rs.25,000/-, the arrears of rent/damages for use and occupation would get adjustment in Rs.25,000/- now within a period of 9 months. On the other hand, learned counsel for the appellant submitted that he had been paying the rent/damages for use and occupation.

Considering the submissions, and taking into account equitable aspects, it is directed that if the appellant has not paid the rent/damages for use and occupation as decreed by learned Courts below, the impugned decree shall not be executed for another period of 9 months from today on the condition of appellant giving undertaking in the trial Court within one month to voluntarily vacate the suit premises on expiry of 9 months. However, if the

appellant is able to show to the learned trial Court that he paid arrears of rent/damages of use and occupation, in that event, the decree shall not be executed for a period of one and a quarter year, on the appellant giving like undertaking within one month in trial Court.

(N P GUPTA),J.

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